

JURY SELECTION THE POWER OF THE PROCESS

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In Death Cases Sometimes We Do A Little Extra



Capital Jury Project

- 53% Of jurors in capital cases make punishment decision during evidentiary phase
- 97% of pro-death jurors felt strongly about their pro-death position during the evidentiary phase

Cold Hard Fact

**Capital Jury Project:
A Substantial Number of Jurors In
Capital Cases Are Not Qualified
To Serve**

Every Capital Juror Must Know

- 1. Each Juror Decides Life or Death – Law is always satisfied with a Life Verdict**
- 2. One vote means life**
- 3. Individual Decision re Mitigating Factors**
- 4. Mitigation Unique to Each Juror**
- 5. Individual Mitigation is sufficient**

Every Capital Juror Must Know

- 6. One mitigating factor is enough for life regardless of the number of aggravators**
- 7. Each juror may vote for life based on mercy alone**
- 8. Individual Moral Assessment – No Law**
- 9. Never required to put into words reason for life vote**
- 10. Each jurors vote is respected**

OLD SCHOOL v. NEW SCHOOL

<ul style="list-style-type: none"> • EDUCATE THE PANEL – INDOCTRINATE • INFORMATION ABOUT THEM • BUILD RAPPORT 	<ul style="list-style-type: none"> • BUILD RAPPORT • INFORMATION ABOUT THEM • EDUCATE THE PANEL
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LISTEN

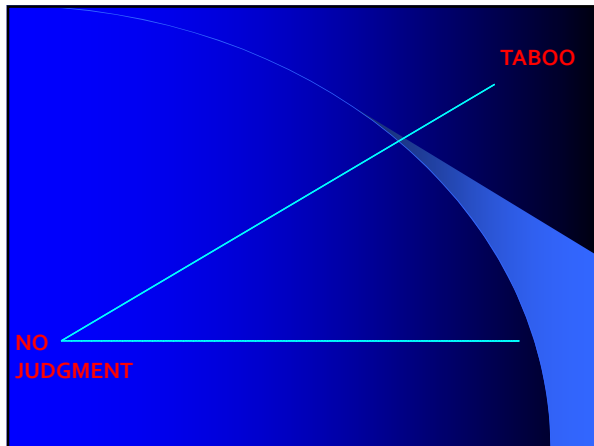


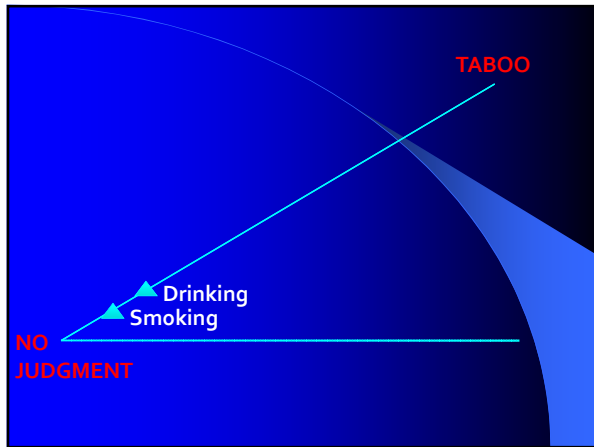
LISTENING = RESPECT

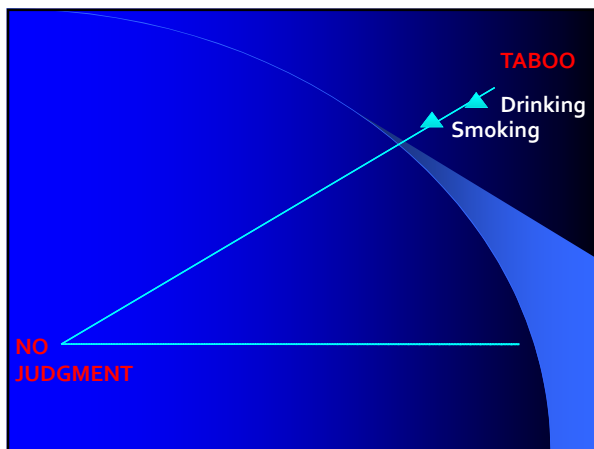
The Judgment Line

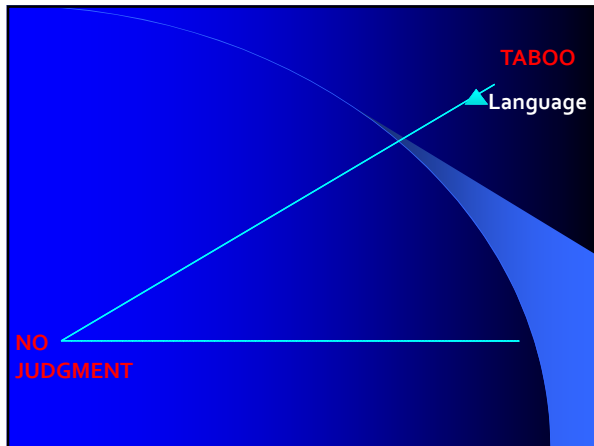
- Shifting Social Values

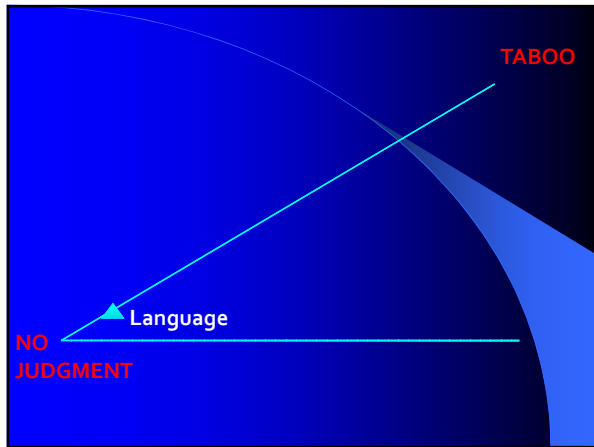
People are in conflict when their experience, what life teaches, challenges what they have been brought up to believe and want to believe.

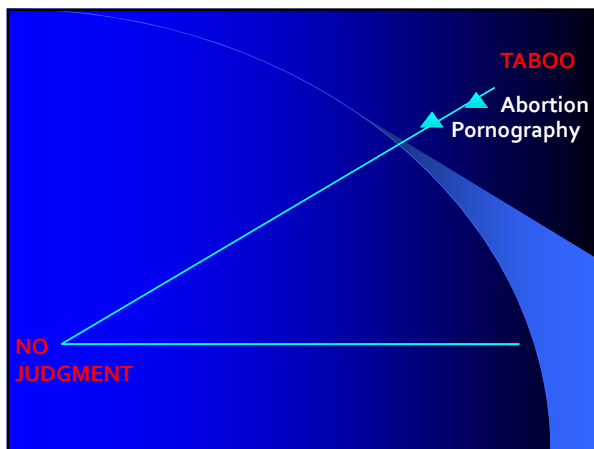


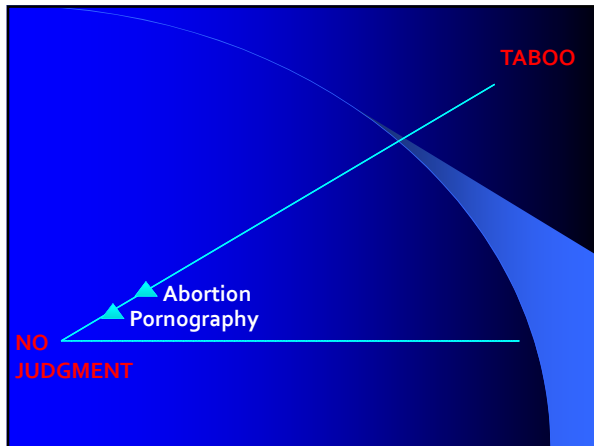












- * IF SOMEONE HAD TOLD ME THESE FIVE THINGS**
- 1. THERE IS NO SUCH THING AS A PERFECT JUROR**
 - 2. YOU CANNOT DO IT THE SAME WAY EACH TIME**
 - 3. JURIES REACH VERDICTS ON SOMETHING OTHER THAN FACTS AND LAW**
 - 4. YOU DON'T EVEN WANT THE CONTROL YOU'RE WISHING FOR**
 - 5. YOU CAN'T CHANGE ANYONE'S MIND DURING JURY SELECTION**

Jury Studies

Done after the verdict

The factors that jurors say are important to them after they have heard the evidence may be quite different that what the jurors think are important to them as they begin jury selection.

Judge = Biggest Impediment

1. Robe doesn't make you good at it
2. Not a legal hearing – factual – legal conclusion
3. The panel members are not witnesses
4. Judges add to the hocus pocus of Jury selection
5. Judge's Power is perceived immediately
6. Judge's are time driven
7. Judge does not know your case
8. Judges think they can instruct away bias

3 STEPS IN DEVELOPING THE JURY PLAN



1. BRAINSTORM



2. PRIORITIZE ISSUES



3. PICTURE THE JURY YOU WANT

TO IMPROVE VOIR DIRE TECHNIQUE **RIGHT NOW**

- ✓ LEARN TO SELF DISCLOSE BEFORE YOU ASK THEM TO
- ✓ BEHAVE AS THOUGH IT MATTERS WHETHER THEY LIKE YOU OR NOT
- ✓ TEAR DOWN AS MANY BARRIERS BETWEEN YOU AS YOU CAN

BUILDING RAPPORT

1. EMPATHY
2. WARMTH / ACCESSIBILITY
3. RESPECT
4. CONGRUENCE

LISTEN



LISTENING = RESPECT

Starting The Conversation

THE PERSON WHO WANTS THE INFORMATION MUST TAKE RESPONSIBILITY FOR THE COMMUNICATION

1. SELF DISCLOSURE
 - IF BOTH SIDES WANT CONTROL- NOTHING HAPPENS
 - PEOPLE TALK TO PEOPLE WHO TALK TO THEM
 - PEOPLE TALK TO THOSE THEY FEEL EQUAL WITH

✓ SELF DISCLOSURE LETS THEM KNOW WHAT'S GOING ON WITH YOU.

✓ LETS THEM KNOW YOU'RE PAYING ATTENTION – THAT YOU HAVE FEELINGS TOO.

WHAT'S GOING ON WITH THEM

- BELIEFS
- ATTITUDES /PREJUDICE
- VALUE SYSTEM

JUROR THINKING

- Beliefs: Perceived truths reinforced within community
- Attitude: Ready made response makes it easy to avoid complexities of life
- Prejudice: Does not respond to individuals response is to a group or category
- Value System : More abstract. Deeply engrained – people are not usually aware of how values dictate behavior

- NON VERBAL CLUES -

BEWARE

BODY LANGUAGE NEEDS A CONTEXT

LISTEN



LISTENING = RESPECT

THE PLANET CALLED TRIAL

JURORS DON'T KNOW THEY ARE SPECIAL

SCRIPTS On our own we will organize and explain the external world in a way that causes the least amount of internal anxiety.

PEOPLE WILL UNDO A SCRIPT IF GIVEN NEW INFORMATION

THE FIRST SCRIPT TO UNDO IS THE ONE THEY HAVE ABOUT LAWYERS

4 KEYS TO AN OPEN ENDED ATMOSPHERE

- ✓ **SELF DISCLOSURE**
- ✓ **CONCRETENESS**
- ✓ **REFLECTION**
- ✓ **CLARIFICATION**

REFLECTION

- LETS THE JURORS KNOW WHEN THEY WERE HEARD
- CLARIFIES FOR THE JURORS WHAT MESSAGES THEY ARE SENDING
- ENCOURAGES THEM TO KEEP TALKING
- ASSISTS THE ATTORNEY IN CLARIFYING WHAT WAS JUST SAID

OVERT BEHAVIOR

The juror committed the behavior to be noticed – you noticed it. You gave the attention the juror wanted

CLARIFICATION

- ALLOWS YOU TO EXPRESS DOUBT AND ASKS THE PERSON TO CONTINUE.

"LET ME SEE IF I'M HEARING YOU . . ."

"YOU SEEM ANNOYED . . ."

CLARIFICATION IS SIMILAR TO REFLECTION BUT HERE YOU SUMMARIZE THE ANSWER.

ALSO -- CLARIFICATION ALLOWS YOU TO POINT OUT CONFLICTING STATEMENTS AND ASK FOR AN EXPLANATION IN A NON-THREATENING WAY:

"EARLIER YOU SAID _____"

"JUST NOW YOU SAID _____ HOW COME ?"


YOU MUST STATE THEIR COMMENTS ACCURATELY



REFLECTING BACK OR ASKING FOR CLARIFICATION FOLLOWED BY AN OPEN ENDED QUESTION IS A POWERFUL INVITATION TO SPEAK.

**THE OPEN ENDED QUESTION –
CANNOT BE ANSWERED BY
“YES” OR “NO”**

TWO RULES:

1. ASSUME THE PERSON HAS AN OPINION,
THOUGHT, FEELING OR REACTION –
ASK FOR IT !
2. BEGIN WITH:


*Introduce a hard topic for
Them to consider, and we've
Begun to educate*

Poison Air

- LAWYERS LIVE IN FEAR THAT
SOMEONE WILL SAY SOMETHING
THAT WILL POISON THE PANEL
- PEOPLE DO NOT GIVE UP THEIR BELIEFS OR
ATTITUDES THAT QUICKLY
- THE JUDGE PROBABLY WON'T STRIKE THE
PANEL

Poison Air

- Why do you feel that way?
- What in your life experience leads you to that belief?
- How long have you held that belief?
- How strong is that belief?
 - On a scale of 1 to 5
- Is there anything I could say that would change your mind?
- The judge will instruct you to put aside your personal feelings, how will you do that?

Poison Air

Shift to close ended ?

- You feel that way because...
- _____ happened to you and led you to this belief.
- You have felt this way since _____.
- On a scale of 1-5 it is a 5 for you.
- You can't think of anything that would change your mind.
- Nothing I would say...
- Nothing the Judge would say...

TELL YOUR STORY FROM THE GET GO

1. EDUCATE - Don't Indoctrinate
DON'T INTIMIDATE
DON'T LECTURE

... Persuasion builds step by step
They will get your drift

FOUR VERSIONS OF REALITY

- WHAT ACTUALLY HAPPENED
- THEIR VERSION
- OUR VERSION
- THE JUROR'S VERSION

SEE THE CASE AS A SEQUENTIAL STORY IN SEPARATE SCENES

- EACH SCENE HAS AN EMOTIONAL CENTER
- DEFINE IT . . . IS THAT EMOTIONAL ISSUE AN AREA THAT MIGHT REVEAL BIAS
- LIST THOSE AREAS AS VOIR DIRE TOPICS
- DEVELOP QUESTIONS ON EACH TOPIC
- PRIORITIZE THE TOPICS . . . OUTLINE FOR OPENING STARTS TO EMERGE

EACH PIECE BUILDS • THE TRIAL HAS UNITY

LISTEN



LISTENING = RESPECT
